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9  
10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 OAKLAND DIVISION

13  
14 **CURTIS LEE ERVIN,**

15 Petitioner,

16 v.

17 **KEVIN CHAPPELL, Acting Warden of**  
18 **California State Prison at San Quentin,**

19 Respondent.

C 00-1228 CW

**CAPITAL CASE**

**STIPULATION AND ~~PROPOSED~~**  
**ORDER RESOLVING SUPPLEMENTAL**  
**MOTION FOR ORDER THAT SAN**  
**QUENTIN STATE PRISON PERMIT**  
**PETITIONER'S COUNSEL TO**  
**CONDUCT IN-PERSON REVIEW OF**  
**RECORDED TELEPHONE CALLS AND**  
**FOR ACCESS TO RELATED**  
**MATERIAL, INCLUDING LOGS AND**  
**TRANSCRIPTIONS**

22  
23 Petitioner Curtis Lee Ervin, Respondent Kevin Chappell, and the California Department of  
24 Corrections and Rehabilitation (CDCR), a non-party specially appearing in the above-captioned  
25 matter as custodian of the telephone records implicated by Petitioner's supplemental motion for  
26 discovery, through their attorneys, have met and conferred regarding the motion and reached a  
27 stipulation that resolves its issues, and submit the stipulation to the Court for its consideration and  
28 approval, as follows:

1           1.     On June 5, 2012, Petitioner filed a supplemental motion for an order that San Quentin  
2 State Prison permit Petitioner's counsel to conduct an in-person review of recorded telephone  
3 calls and for access to related materials, including logs and transcriptions. (Docket No. 222.)

4           2.     On June 18, 2012, counsel for Petitioner and Respondent stipulated to extend  
5 Respondent's deadline to respond to Petitioner's motion from June 19, 2012 to June 29, 2012  
6 (Docket No. 225), which the Court approved on June 19, 2012 (Docket No. 226).

7           3.     On June 29, 2012, counsel for Petitioner, Respondent, and CDCR stipulated to extend  
8 the deadline to respond to Petitioner's motion from June 29, 2012 to July 13, 2012. (Docket No.  
9 227.) Specifically, CDCR's counsel, following a preliminary review of Petitioner's motion and  
10 investigation regarding the discovery sought, met and conferred with Petitioner's counsel and  
11 indicated that San Quentin was inclined to accommodate Petitioner's request for an in-person  
12 review of the telephone records at issue. CDCR's counsel, however, needed additional time to  
13 ensure that the disclosure of such information, to the extent it may implicate inmates' identifying  
14 information, does not contravene federal or state privacy laws and regulations. (*Id.*) On July 3,  
15 2012, the Court approved the parties' stipulation. (Docket No. 228.)

16           4.     On July 6, 2012, counsel met and conferred further regarding Petitioner's motion and  
17 reached an agreement that resolves its issues.

18           5.     At a time in the near future to be agreed upon by counsel for Petitioner and San  
19 Quentin, through CDCR's counsel, Petitioner's counsel will be permitted to conduct an in-person  
20 review of the recorded telephone calls made from San Quentin to the California Appellate Project  
21 (CAP) between August 1, 2011 and October 31, 2011 for the purpose of identifying the telephone  
22 calls made in that time period to CAP by inmate Gary Dale Hines (CDCR No. D91000). The  
23 disclosure of the name of the inmate placing the telephone call is authorized by title 15, section  
24 3261.2(e) of the California Code of Regulations.

25           6.     During Petitioner's counsel's in-person review, Petitioner's counsel agrees to listen to  
26 no more than the first segment of the telephone call, generally within the first five to ten seconds  
27 of any given call, to identify solely the identity of the individual who placed the call. Should  
28 Petitioner's counsel be unable to determine the identity of the caller, Petitioner's counsel agrees

1 to confer with San Quentin personnel present at the in-person review to determine the least  
2 intrusive way to determine the caller's identity without encroaching upon the substance of the  
3 call. Petitioner's counsel further agrees not to disclose the identity of any caller, other than  
4 inmate Hines, to any third person.

5 7. Counsel for the parties also met and conferred regarding additional requests or issues  
6 raised by Petitioner's supplemental discovery motion. Petitioner's counsel has been advised that  
7 San Quentin does not have the capacity to transcribe recorded telephone calls and does not have  
8 any transcript of any telephone call made by inmate Hines to CAP. Nor does San Quentin have in  
9 its possession, custody, or control any documentation, such as Unit Telephone Logs or inmate  
10 sign-up sheets, reflecting the telephone calls made to CAP during the time period at issue. San  
11 Quentin has retained, and will not destroy during the pendency of this litigation, copies of the  
12 voice recordings that San Quentin has identified as having been made from San Quentin to CAP  
13 during August 1, 2011 to October 31, 2011.

14 8. Following Petitioner's counsel's in-person review of the telephone calls at issue, San  
15 Quentin will provide to Petitioner's counsel copies of the telephone calls identified as being made  
16 by inmate Hines to CAP during the time period at issue.

17 9. Should Petitioner rely on or use the recorded telephone calls as evidence in  
18 connection with any further motion or proceeding in this matter, Petitioner's counsel will provide  
19 Respondent's counsel, within a reasonable time frame, copies of the telephone calls identified as  
20 being made by inmate Hines to CAP during the time period at issue supplied by CDCR to  
21 Petitioner's counsel pursuant to this stipulation and proposed order. The use of the recorded  
22 telephone calls shall be limited to Petitioner's litigation only, and may not be used against inmate  
23 Hines in his capital case, absent a separate waiver of any privilege held by inmate Hines or  
24 pursuant to court order, or any other proceeding, absent a separate waiver of any privilege held by  
25 inmate Hines or pursuant to court order.

26 10. The parties agree that the issues raised by Petitioner's supplemental discovery motion  
27 have been resolved such that Petitioner's motion may be denied as moot.  
28

11. The parties agree that this stipulation does not waive any rights the parties may have regarding the discovery sought by the instant motion, including Petitioner's right to seek further relief, Respondent's right to object to any such request, and CDCR's right to appear specially to respond to that request.

IT IS SO STIPULATED.

Dated: July 13, 2012

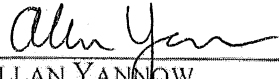
Respectfully Submitted,

LAW OFFICES OF ROBERT R. BRYAN  
LAW OFFICES OF PAMALA SAYASANE

  
PAMALA SAYASANE  
*Attorneys for Petitioner*


Dated: July 13, 2012

OFFICE OF THE ATTORNEY GENERAL

  
ALLAN YANNO  
Deputy Attorney General  
*Attorneys for Respondent*

Dated: July 13, 2012

OFFICE OF THE ATTORNEY GENERAL

  
ADRIANO HRVATIN  
Deputy Attorney General  
*Attorneys Specially Appearing for the  
California Department of Corrections  
and Rehabilitation*

IT IS SO ORDERED.

Dated: July 17, 2012

  
THE HONORABLE CLAUDIA WILKEN  
United States District Court Judge

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